IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

S.B. CIVIL WRIT PETITION NO.3871/2006
(Sahi Ram Bishnoi Vs. U.O.I. & Ors.)

Date of Judgment : 02.08.2007

P R E S E N T

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. Arun Bhansali, for the petitioner.
Mr. K.K. Bissa, for respondents.

By way of filing the present writ petition, the petitioner is challenging the order dated 12.3.2004 (Annexure-P/7) passed by Commissioner of Income-tax-I, Jodhpur whereby the application filed by the assessee under Section 119 (2) (b) of the Income Tax Act for claiming refund was rejected.

The main contention of the learned counsel for the petitioner is that the Commissioner, Income-tax was under obligation to consider the notification dated 26.10.1993 (Annexure-P/8) at the time of deciding his application.

The said notification dated 26.10.1993 reads

as follows :

> "In continuation of earlier orders dated 5.2.1988 and 17.8.1988 issued from F.No.225/201/87-IT (A-II), the Central Board of Direct Taxes, in exercise of the power conferred by clause (b) of sub-section (2) of section 119 of the Income-tax Act, 1961, hereby order that, in all cases where an otherwise valid refund claim under section 237 of the Income-tax Act, 1961, is filed by an assessee after the expiry of the statutory time limit prescribed under section 239 of the Act, the Assessing Officer, having jurisdiction over the case, may admit the said refund claim and dispose of the same on merits and in accordance with law provided the following conditions are satisfied :-
>
> (i)the Refund arises as a result of excess tax deducted at source, collected at source and payments of advance tax under the provisions of Chapters XVII-B, XVII-BB and XVII-C respectively and the amount of refund does not exceed Rs.1 lakh for any assessment year;
>
> (ii)the returned income is not a loss where the assessee claims the benefit of carry forward of the loss;
>
> (iii)the refund claimed is not supplementary in nature, i.e., claim for additional amount of refund after the completion of the original assessment for the same assessment year; and
>
> (iv)the income of the assessee is not

> assessable in the ands of any other person under any of the provisions of the Act."

I have heard learned counsel for the parties and perused the impugned order.

It is obvious from the order itself that at the time of deciding the application of the petitioner for refund, the aforesaid notification was not considered by Commissioner, Income-tax-I, Jodhpur. Accordingly, in the interest of justice while quashing the impugned order dated 12.3.2004 passed by Commissioner, Income-tax-I, Jodhpur, the case is remitted to him for deciding the same afresh after taking into account the notification dated 26.10.1993. The petitioner is also at liberty to raise all his objections to satisfy the Commissioner, Income-tax-I, Jodhpur with regard to his case.

With the aforesaid observations and directions, the writ petition stands disposed of.

(GOPAL KRISHAN VYAS), J.

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